

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

GEORGE HOLLEY, :

Defendant. :

Criminal No. 11-0066 (JAP)

**MEMORANDUM OPINION
AND ORDER**

PISANO, District Judge.

Before the Court is Defendant's motion to preclude Steven Dudas from testifying at trial. Defendant's motion relates to two statements made by Mr. Dudas that were recorded by his lawyer. The first and second statements were inconsistent. The defense alleges, and the Court found, that after giving the first statement, Mr. Dudas' lawyer engaged in misconduct by making demands for payment in exchange for Mr. Dudas' favorable testimony at trial.

In reviewing the circumstances of Mr. Dudas' statements, the Court finds that any misconduct by Mr. Dudas' lawyer should not result in precluding Mr. Dudas from testifying as a fact witness at trial. The case relied upon by Defendant, *Erickson v. Newmar Corp.*, 87 F.3d 298 (9th Cir. 1996), involved misconduct by a lawyer for a party to the action and is inapposite to the current matter.

If Mr. Dudas gave inconsistent statements about the facts, he is subject to cross-examination; and, if other circumstances would impeach his credibility, counsel will be free to explore them during Mr. Dudas' trial testimony. Accordingly,

IT IS on this 27th day of July, 2012,

ORDERED that Defendant's motion to preclude Steven Dudas from testifying is
DENIED.

/s/ JOEL A. PISANO
United States District Judge